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Amalia Rodriguez-Mendoza
District Clerk
Travis District

No. __________

STATE OF TEXAS, Plaintiff,	§ §	IN THE DISTRICT COURT OF
v.	§ § §	TRAVIS COUNTY, TEXAS
HABR, LLC d/b/a DEBTOR SOLUTION; Defendant	§ §	________ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff, STATE OF TEXAS, acting by and through the Attorney General of Texas, Greg Abbott, complains of HABR, LLC d/b/a DEBTOR SOLUTION, Defendant, or "Debtor Solution," and for cause of action would respectfully show as follows:

DISCOVERY CONTROL PLAN

1. The discovery in this case is intended to be conducted under Level 2 pursuant to TEX. R. CIV. P. 190.3.

JURISDICTION

2. This action is brought by Attorney General Greg Abbott, through his Consumer Protection and Public Health Division, in the name of the State of Texas and in the public interest under the authority granted him by § 17.47 of the Texas Deceptive Trade Practices-Consumer Protection Act, TEX. BUS. & COM. CODE ANN. § 17.41 *et seq.* (Vernon 2002 & Supp. 2008) ("DTPA") upon the grounds that Defendant has engaged in false, deceptive, and misleading acts and practices in the course of trade and commerce as defined in, and declared unlawful by, §§ 17.46(a) and (b) of the DTPA.

NATURE OF DEFENDANT'S OPERATIONS

3. Defendant operates a for-profit debt settlement company. Debt settlement is a form of consumer debt relief, targeted to consumers with thousands of dollars of unsecured debt.

Consumers interested in debt settlement likely are also considering options such as traditional credit counseling, debt management plans, debt consolidation loans, and possibly bankruptcy.

4. Unlike those alternatives, debt settlement is an aggressive form of debt relief, in which consumers stop paying all of their unsecured debts, and save the money they would normally use to pay those debts. After several months, when the accounts are in default, the debt settlement company will contact the creditor and negotiate a lump-sum payoff of the debt, ideally at a highly reduced percentage. The consumer then uses the money that he/she has been saving to pay the lump-sum, and can then have the benefit of a significant portion of their original debt being forgiven.

5. Because of its theoretical potential for a quick turnaround and significant savings, debt settlement is often promoted emphasizing these facts. For example, Defendant Debtor Solution prominently represents on its web site that: "Deciding for the right Debt settlement company or Debt consolidation program is a great way to eliminate from 40-65% of your debt and become completely debt free in 18-36 months. We at DebtorSolution can design a personalized debt settlement program or debt consolidation plan that can lower your monthly payments by almost 50% and help you avoid bankruptcy." Debt settlement companies may also disparage the alternative forms of debt relief in order to persuade consumers that settlement is the best option for them. For example, Debtor Solution advises potential customers that, "The FTC (Federal Trade Commission) defines Bankruptcy as: Personal bankruptcy generally is considered the debt management option of last resort because the results are long-lasting and far-reaching. A bankruptcy stays on your credit report for 10 years, and can make it difficult to obtain credit, buy a home, get life insurance, or sometimes to get a job." In reality, the debt settlement company has no interest or ability to advise consumers on the best option for them, rather they are selling their program.

6. Because debt settlement only works if consumers are not making monthly payments on their unsecured debts (since creditors will not want to settle a debt if they are receiving monthly payments), there are inherent risks involved with participating in a debt settlement program that can have catastrophic effects on the consumer. Specifically, consumers entering a debt settlement program may experience any or all of the following:

A. Creditors will continue to assess interest, late fees, over-limit charges, and any other fees associated with the account. As a result, at the time that a settlement is reached, the consumer owes significantly more on their account, thus reducing the actual savings.

B. Creditors are under no obligation to accept, or even entertain, a settlement offer. When this occurs, consumers are stuck with a vastly higher balance because of the interest and late fees that have accumulated on the debt. As a result, the consumer can end up in a far worse financial situation then when they entered the program.

C. Because they are no longer receiving monthly payments, creditors will likely engage in collection activities which may include repeated phone calls and other correspondence. Over time, these activities can increase, especially as the consumer's account may get transferred to a collection agency.

D. Once a consumer stops paying on their accounts, the creditor may file a lawsuit against the consumer for breaking their contract. Most debt settlement companies, including Defendant, cannot offer any assistance when a lawsuit is filed, and as a result the consumer can end up with multiple judgments against them.

E. The consumer's credit reports will reflect the late charges and nonpayment of their unsecured debt. As a result, the consumer's credit score will drop while participating in the program, and the consumer may experience the long term effects of a low credit score, which can include difficulty in buying a house or car, obtaining insurance, or obtaining employment.

F. The debt forgiveness that occurs as part of the settlement is taxable income.

7. Because debt settlement is generally a "for-profit" industry, companies charge their customers large fees. Fees are typically calculated as a percentage of the total debt the consumer brings into the program, are often collected in the first several months of the program, and are for

the most part non-refundable. In addition, there may be monthly maintenance fees, enrollment fees, administrative fees, and back-end settlement fees. As a result, the high fees cut into the potential savings that a consumer can experience in the program. Moreover, these fees may be the tip of the iceberg for consumers - if they are sued and want an attorney they may have to a pay a lawyer's legal fees, if they want to improve their credit after participating in the settlement program they may have to pay a credit repair firm's fees, and if they want tax advice regarding debt forgiveness, they may need to pay an accountant.

8. Because of the additional costs and negative effects of debt settlement, it is often difficult to say what a consumer's true cost is in a program, or what benefit they may really see. For example, a consumer with a $10,000 unsecured debt may be told their debt can settle for $4,000, or a 60% savings, but when the company's fees are added, along with whatever costs are associated with improving the damage caused by the settlement process, the consumer likely will spend far more than $4,000 in resolving the debt. In addition, late fees and interest will likely increase the $10,000 debt, such that a 60% settlement will actually be for much more than $4,000. Add to this the risk that a creditor will not settle an account, and it becomes evident that debt settlement is a risky form of debt management, that requires clear disclosures to consumers so that they can make an informed decision.

DEFENDANT

9. Defendant HABR, LLC is a Kentucky limited liability company formed in March of 2007 by Scott Andrew Wallitsch. Defendant HABR, LLC does business under the assumed name "Debtor Solution" in Texas and throughout the United States. Defendant's principal place of business is at 4319 Lincoln Road, Louisville, Kentucky, 40220. Defendant engages in business in the State of Texas but does not maintain a regular place of business in this state nor has Defendant

designated an agent for service of process. This suit arises out of Defendant's business in this state as more specifically described below. Pursuant to the Texas Civil Practices & Remedies Code § 17.044, Defendant can be served by certified mail, return receipt requested, directed to Defendant through the Texas Secretary of State as an agent for service of process at the following address: Citations Section, Room 214, 1019 Brazos, Austin, Texas 78701.

VENUE

10. Venue of this suit lies in Travis County, Texas under the DTPA §17.47(b) because Defendant has done business in Travis County, Texas.

PUBLIC INTEREST

11. Because Plaintiff STATE OF TEXAS has reason to believe that Defendant has engaged in, and will continue to engage in, the unlawful practices set forth below, Plaintiff STATE OF TEXAS has reason to believe that Defendant has caused, and will cause, adverse effects to legitimate business enterprise which conducts its trade and commerce in a lawful manner in this State. Therefore, the Consumer Protection and Public Health Division of the Office of the Attorney General of Texas believes and is of the opinion that these proceedings are in the public interest, and at least seven days prior to instituting this action contacted Defendant to inform it in general of the alleged unlawful conduct.

TRADE AND COMMERCE

12. Defendant is engaged in trade and commerce as that term is defined by § 17.45(6) of the DTPA.

ACTS OF AGENTS

13. Whenever in this Petition it is alleged that Defendant did any act, it is meant that:

A. Defendant performed or participated in the act; or

B. Defendant's officers, agents, or employees performed or participated in the act on behalf of and under the authority of the Defendant.

STATEMENT OF FACTS

14. Defendant Debtor Solution operates a web site at www.debtorsolution.com, on which it advertises its debt settlement program, which is available nationwide, including in Travis County, Texas. Defendant's web site includes several representations regarding the benefits of its program:

A. ". . . [W]e have a proven record of success helping thousands of individuals recover financial freedom."

B. "Our Debt Elimination lets you save up to 65% on your debts."

C. "Our Debt Elimination ends annoying creditor calls."

D. "Our highly-trained, experienced consultant will work to lower your debt by an average of between 45-65%."

E. "Our debt relief program can lower your monthly credit card payment to nearly 50% of its current value."

F. "Become Debt Free in 12-36 months"

G. "One of the important advantages of debt settlement is that the creditor agrees to having been paid 'in full' or that the debt was paid in a 'satisfactory' condition."

H. "The impact of debt settlement on your credit score is not really that high as believed, so don't let that be a cause of doubt to you."

15. Defendant offers a "100% satisfaction guarantee," but provides conflicting information regarding its terms. For example, contrast "We will refund all of your payments if we don't fulfill our promise of reducing your debt from 40 to 65%" with "If we can not settle your accounts for 55% of the balance when you entered the program, we will refund our fees," and with "If we can not settle your accounts for 40% of the balance when you entered the program, we will refund our fees."

16. To further its representations regarding its reliability and trustworthiness, Defendant includes the logo of the Better Business Bureau on its web site in multiple locations. Defendant further repeatedly represents that is has an "excellent history and rating with the BBB." In fact however, Debtor Solution is not accredited by the BBB, and has a "C-" rating with that entity.

17. On its web site, Defendant provides advice regarding alternative forms of debt relief. For example:

A. In describing credit counseling, Defendant provides tips for choosing a counselor, including, "The credit counseling service must have a record of at least ten years in business, and "A Better Business Bureau seal of approval also helps in building trust with a credit counseling agency."

B. Defendant also represents the effects that credit counseling will have on the consumer's credit: "The credit counseling company keeps your first payment as a down payment for their services. This means that all your account will go at least 30 days delinquent." *Sic.* And in comparing the effects on credit between debt settlement and credit counseling, Defendant represents that ". . . the long term effects of a credit counseling program will definitely restrict you much more."

C. Although Defendant acknowledges that it is not a law firm, it gives detailed descriptions of bankruptcy, including the differences between Chapter 7 and Chapter 13, exempt property, non-discharged debts, filing fees, and average attorney costs. Defendant advises consumers to speak with a "financial expert" if the consumer is seriously considering bankruptcy.

D. In describing Chapter 7 bankruptcy, Defendant represents that it is the "more severe" form of bankruptcy, and that debtors' property will be auctioned off to pay back creditors. Further, Defendant represents that Chapter 7 is "best for individuals making less than the state average income and who are not able to afford a debt consolidation or debt settlement program."

18. In reality however, the representations and promises made by Debtor Solution as described above are often false, or at best misleading, and contain several material omissions regarding Defendant's, or any, debt settlement program. These include:

A. Debtor Solution cannot know at what percentage consumers' debts will settle for, nor can they know how long it will take to complete Defendant's program. Indeed, since nothing requires creditors to settle at a particular rate, or even accept a settlement, Debtor Solution cannot know what individuals' experiences will be – especially since it does not know who the consumer's creditors are at the time of the representations. Moreover, even if a creditor accepts a settlement, Debtor Solution cannot guarantee how that settlement will be reported to credit reporting agencies.

B. Debtor Solution cannot stop creditor collection efforts. In fact, when a consumer enrolls in a debt settlement program, or otherwise decides to stop paying bills, creditors often increase collection efforts, including potentially filing lawsuits against the consumer.

C. Debtor Solution's program, like all debt settlement programs, can often result in long-term negative effects on the consumer's credit. Because everyone's credit situation is unique, it is impossible to draw general conclusions as to whether debt settlement or credit counseling will have a greater negative effect.

D. Debtor Solution's descriptions of credit counseling and Chapter 7 and Chapter 13 bankruptcies are inaccurate. Debtor Solution is not a law firm qualified to provide legal advice regarding bankruptcy.

19. Debtor Solution fails to clearly disclose the negative effects of its, or any, debt settlement program. These include increased collection efforts, the risk of lawsuits, the fact that creditors may not accept any settlement, the fact that debt forgiveness is taxed as income, the fact that late fees and interest will increase the amount of the consumer's debt, the fact that Defendant cannot work with certain creditors, and the negative effects on the consumer's credit. While some of these representations are present on its web site, Defendant has created a complex maze of over 50 unique web pages with often times confusing information and random links to additional pages, with the effect of concealing these material disclosures. By hiding this material information, and disparaging other forms of debt relief, Defendant misleads consumers into believing that Debtor Solution's debt settlement program is the only viable option, no matter what the consumer's unique situations may be.

VIOLATIONS OF DTPA

20. Plaintiff, the State of Texas, incorporates and adopts by reference the allegations contained in each and every preceding paragraph of this petition.

21. Defendant, as alleged and detailed above, has in the course of trade and commerce engaged in false, misleading and deceptive acts and practices declared unlawful in § 17.46(a) and (b) of the DTPA. Such acts include:

A. Engaging in false, misleading or deceptive acts or practices in violation of § 17.46(a) of the DTPA.

B. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not in violation of § 17.46(b)(5) of the DTPA.

C. Disparaging the goods, services, or business of another by false or misleading representation of facts in violation of § 17.46(b)(8) of the DTPA.

D. Advertising goods or services with intent not to sell them as advertised in violation of § 17.46(b)(9) of the DTPA.

E. Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law in violation of § 17.46(b)(12) of the DTPA. And,

F. Failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction which the consumer would not have entered into had the information been disclosed in violation of § 17.46(b)(24) of the DTPA.

PRAYER

22. By reason of the acts and practices described herein above, DEFENDANT has violated and will continue to violate the laws as herein alleged unless enjoined by this Honorable Court.

23. WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that DEFENDANT be cited according to law to appear and answer herein; that after due notice and hearing a temporary injunction be issued; and that upon final hearing a permanent injunction be issued, restraining and enjoining DEFENDANT, its officers, agents, servants, employees and attorneys and any other person in active concert or participation with DEFENDANT, from engaging in the following acts or practices:

A. Representing to consumers that Defendant will settle consumers' debts for a certain percentage of the debt, or within a certain percentage range, unless Defendant has a substantial basis in fact for the representations. For purposes of compliance with this term, the substantial basis in fact shall be:

(i) Contractual agreements with creditors to settle debts with clients of the Defendant at the represented percentage of the debt, or within the represented percentage range, or

(ii) A documented record of at least three years of settlement data which reflects that at least 75% of accounts handled by Defendant settled at or below the represented percentage or percentage range.

B. Failing to clearly and conspicuously disclose to consumers that Defendant cannot assist with certain types of debt, including but not limited to, student loans.

C. Failing to clearly and conspicuously disclose that consumers may be sued by their creditors if they are enrolled in Defendant's program.

D. Failing to disclose to consumers that Defendant will not be able to assist the consumer with any lawsuit that is filed by a creditor against the consumer.

E. Failing to clearly and conspicuously disclose to consumers that enrollment in Defendant's program will likely result in increased collection efforts by the consumers' creditors.

F. Misrepresenting Defendant's ability to cease contact and collection efforts by the consumers' creditors.

G. Misrepresenting Defendant's ability to settle with all creditors, or at any particular rate with those creditors.

H. Failing to disclose to consumers any creditors who refuse to work with Defendant and/or any other debt settlement companies.

I. Failing to disclose that a consumer's debt will continue to increase while the consumer is participating in Defendant's debt settlement program, including but not limited to:

(i) Increases due to compounding interest;

(ii) Late fees and other penalties for nonpayment; and

(iii) Increased interest rates due to default.

J. Failing to disclose to consumers that the amount of debt they are ultimately required to pay in order to resolve a debt obligation may be far larger than the amount of debt with which they enter Defendant's program.

K. Failing to disclose that Defendant cannot guarantee that the consumers' creditors will agree to settle with the consumers for any amount less than the full amount owed.

L. Failing to disclose that consumers will owe taxes on forgiven debt amounts.

M. Making any false or misleading representations regarding bankruptcy.

N. Misrepresenting Defendant's ability to provide tax, legal, accounting, or credit repair advice.

O. Misrepresenting Defendant's experience or past success in debt settlement.

P. Making any false or misleading representations regarding consumer credit counseling.

Q. Misrepresenting the effects of debt settlement, or any other form of debt relief, on a consumer's credit score.

24. Plaintiff further requests that upon final hearing this Court award such relief as the Court finds necessary to redress injury to consumers, including but not limited to restitution of monies paid by consumers, and further order Defendant to pay to the State of Texas:

A. Restitution of monies paid by consumers.

B. Disgorgement of any ill-gotten gains.

C. Civil penalties of up to $20,000.00 per violation of the DTPA.

D. Pre-judgment and post-judgment interest on all awards of restitution, damages, or civil penalties, as provided by law. And,

E. All costs of Court, costs of investigation, and reasonable attorneys fees pursuant to TEX. GOVT. CODE ANN. § 402.006(c).

25. Plaintiff further prays for such other relief to which Plaintiff may be justly entitled.

Respectfully submitted,

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